

# SOUTH AFRICA

In 1998, the U.S. trade surplus with South Africa was \$571 million, an increase of \$71 million from the U.S. trade surplus of \$500 million in 1997. U.S. merchandise exports to South Africa were \$3.6 billion, an increase of \$626 million (20.8 percent) from the level of U.S. exports to South Africa in 1997. South Africa was the United States' 31st largest export market in 1998. U.S. imports from South Africa were \$3.1 billion in 1998, an increase of \$555 million (22.2 percent) from the level of imports in 1997. The stock of U.S. foreign direct investment (FDI) in South Africa at the end of 1997 was \$2.3 billion, an increase of 57.7 percent from the level a year earlier. U.S. FDI in South Africa is concentrated largely in manufacturing (notably electronics, industrial chemicals and petroleum) and the financial sectors.

## IMPORT POLICIES

South Africa's Import and Export Control Act of 1963 authorizes the Minister of Trade and Industry to act in the national interest to prohibit, ration, or otherwise regulate imports for, inter alia, health, environmental, or security reasons and to ensure minimum quality specifications. In recent years, the list of restricted goods requiring import permits has been substantially reduced, reflecting the Department of Trade and Industry's (DTI) policy not to protect local industries by means of non tariff barriers. Among the products still requiring import permits are fish and fish products, used goods, scrap, waste, ashes, residues, petroleum products, ozone-depleting chemicals, firearms and ammunition, gambling equipment, and radioactive chemical elements. DTI says it will phase out import permits over time in favor of tariffs. DTI is developing a system to issue permits electronically and to link DTI with customs and with persons applying for permits to facilitate the customs application and clearing process. Import permits must be obtained from the Director of Imports and Exports before the date of shipment.

While working toward eliminating import permits in accord with WTO regulations, the South African Government has also simplified its tariff structure and reduced tariffs across many product lines. South Africa, however, has recently raised tariffs on certain agricultural products in order to protect local producers. The following agricultural goods are affected:

**Wine:** As of January 1, 1998, duties on imported wines are 25 percent FOB. DTI argues that this increase was part of South Africa's efforts to replace import permits with tariffs.

**Wheat and Corn:** DTI reinstituted a tariff designed to rise in accordance with a drop in the international grain prices. At current international prices, the tariff on corn is approximately \$4.36 a ton; wheat is tariff free.

**Poultry:** Despite strenuous lobbying by the U.S. Government, the Board of Trade and Tariffs (BTT) raised tariffs on imported frozen chicken parts from a 27 percent flat rate to 2.2 rand per kilo. For a time, importers circumvented this high tariff by bringing in "seasoned" parts that could be imported at the 27 percent rate. This loophole was closed in 1998, and all frozen chicken parts carry the higher (effectively 64 percent) rate. BTT took this action in response to pressure from one large South African chicken producer, which is a part of a corporate conglomerate.

**Irradiated meat:** Because of a Ministry of Agriculture determination that not enough information exists regarding the safety of irradiated meat and other irradiated food products, importing such goods into South Africa is prohibited.

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South Africa reduced the tariff on instant-print cameras from 6 percent to 0 percent on June 28, 1996. However, instant-print cameras and instant-print film continue to be classified as “luxury items” and remain subject to an excise tax of 15 percent. Although these excise taxes are nondiscriminatory, U.S. producers maintain that no domestic producers exist, and the high taxes are being circumvented by illegal importers.

Any South African producer may petition the BTT for tariff protection. Approval of such petitions is granted if the producer has a major share of the domestic market and can prove that foreign competitors are challenging its market dominance. If no application passes an initial assessment, the government begins a consultation process. Although public comment on tariff -protection requests is normally open for a 6-week period, South Africa introduced a 3-week public comment provision for emergency situations. After the consultations, the government investigates the matter further and then issues a decision. The government may deliberate for an undefined period before rendering a decision.

South Africa, complying with its WTO commitments, has worked to reform a complex tariff structure. In the past few years, South Africa has simplified and reduced its overall tariff rate from more than 20 percent to 10 percent. Nevertheless, many industries previously protected by nontariff barriers have tried to increase industry tariffs to WTO-bound levels. DTI and BTT, however, refused most of these tariff increase applications.

Between 1992 and 1994, South Africa increased tariffs on paperboard and paper products, certain steel products, and cosmetics. South Africa instituted a general phased reduction of tariffs on paper and paperboard in 1995 that will bring most tariffs down to 10 percent ad valorem by 2000 and to 5 percent ad valorem by 2005. Both DTI and BTT have introduced rebate provisions for many categories of paper and paperboard, and authorized full duty rebates on imports of uncoated and coated kraft paper and paperboard, coated paper and paperboard, and tarred, bituminized or asphalted paper and paperboard. Because of the complex nature of the tariff headings and rebate provisions of the paper and paperboard industry, the Government of South Africa requested that numerical tariff headings be provided to facilitate inquiries about these industries.

Although DTI maintains that no tariff increases have resulted from its tariff rationalization process since 1994, several U.S. exporters have complained of increased tariff rates on their products as a result of reclassification or misclassification into a higher tariff category. One such instance involves the misclassification of photographic film in plates into the tariff heading of photographic film in coils, which carries a significantly higher tariff rate.

DTI has instituted an export promotion scheme specifically for the textile industry whereby an exporter is permitted to import duty free an amount of raw material equivalent to 30 percent of its exports. A similar scheme exists for the automobile industry. These export subsidy schemes essentially subsidize exports via indirect, export based rebates rather than direct subsidies.

As a result of market-access commitments made in the Uruguay Round and DTI's attempts to reform its tariff structure, South Africa is committed to:

- rationalize 9,580 tariff lines down to 7,182.
- bind 98 percent of its tariff lines to WTO binding levels, up from 16 percent bound prior to 1994.
- replace all remaining quantitative controls with ad valorem duties and make formula duties WTO consistent.
- cut back tariff lines from the past 80 different levels into eight levels ranging from 0 to 30 percent with a

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few exceptions. These tariff lines will comply with the WTO binding levels over 7 years (ending in 2002) instead of the 12 years negotiated under the WTO, and maximum tariff levels in several categories will fail to levels below WTO binding levels.

According to the DTI/BTT plan, South African tariffs in textiles will fall to the following five levels:

PRODUCT	SA PLAN (percent)	WTO BINDING LEVEL (percent)
Clothing	40	45
Made-up textiles	30	30
Fabrics	22	25
Yarn	15	17.5
Fibers	7.5	10

### Customs Procedures

In accordance with the WTO customs valuation agreement, customs valuation is based on the FOB price in the country of export or the transaction value, that is the actual price paid or payable. If the transaction value cannot be ascertained, the actual price paid for similar goods, or a computed value may be used based on production cost of imported goods.

In 1997, South African Customs was placed under the South African Revenue Service (SARS) and the position of Commissioner of Customs was eliminated. The U.S. Customs agent in South Africa reports that the SARS investigators review papers and accounting records in tracing funds to detect illegal activities. In the last nine months, the Customs inspectors have increased the number of physical searches of passengers and cargo with positive results. SARS personnel are concerned with collecting revenue and see that enforcing customs regulations may also increase revenue as well as compliance.

Some South African land points of entry have been closed to commercial traffic to allow the Customs officials to increase control and examinations at the remaining posts. As a result, some Customs agents have been redeployed, but there is still a shortage of Customs officials. A border unit of the South African police was established in April 1997. The unit is responsible for security and enforcement at South African ports of entry and works closely with South African Customs.

### GOVERNMENT PROCUREMENT

Government procurement is regulated by the State Tender Board and Provincial Tender Boards. Parastatals funded by the government generally follow government policy on procurement. A proposal exists to rationalize the many provincial and parastatal tender boards into one national tender board.

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Preferences exist to promote local manufacture and are based on level of local content, use of the SABS mark, and use of locally manufactured electronic systems and components. In addition, the National Industrial Participation Programme provides for an industrial participation in all state and parastatal contracts valued at US\$10 million or more. Under the program, the seller must invest at least 30 percent of the value of the imported content in a new or incremental business in South Africa. In the case of defense bids, the figure increases to 50 percent. The South African Defense Forces (SADF) modernization program has selected preferred bidders from Italy, Germany, the UK, and Sweden for modernizing certain SADF equipment. All of the tenders have significant offset components as required by the bidding terms.

### **EXPORT SUBSIDIES**

South Africa has focused on means other than direct subsidies for promoting South African exports. Export Marketing Assistance (EMA) offers financial assistance for the developing new export markets through financing of trade missions and market research. An export finance guarantee for small exporters promotes small and medium sized enterprises.

For a limited period, existing nondiscriminatory tax allowances such as the Income Tax Act for machinery and buildings used in a manufacturing process will be granted on an accelerated basis. If any new or unused plant or machinery is acquired and used for manufacturing by a taxpayer between July 1, 1996, and September 30, 1999, the cost can be written off over 3 years. A similar allowance is also granted to a lessor of manufacturing plants and machinery. Similarly, a 10-year write-off is available for erecting any building, or any improvements to a building for manufacturing during July 1, 1996, to September 30, 1999, and used before March 31, 2000. Finally, a tax holiday scheme provides for up to 6 years of tax-free status for incipient or “greenfield” investments that qualify in “specified manufacturing concerns,” satisfy a “labor intensity” formula, and promote development in an underdeveloped geographic location. For each component, the qualifying company will receive two years of continuous tax-free status. The tax holiday scheme is available to all qualifying foreign or domestic investors. Other subsidies include electricity and transport rebates for businesses located in designated development corridors.

### **LACK OF INTELLECTUAL PROPERTY PROTECTION**

To improve its enforcement of intellectual property rights (IPR), South Africa, which is regarded as a developed country in terms of its IPR obligations in the WTO, has been improving its legislation and enforcement techniques for IPR violations. Two IPR-related laws were passed on September 9, 1997: the Intellectual Property Laws Amendment Act and the Counterfeit Goods Act. The former amends the 1978 Patent Act, 1993 Trademarks Act, and the 1993 Designs Act, among others, to address South Africa’s obligations under TRIPs. The latter law provides for criminal prosecution of persons trading in counterfeit or pirated goods and establishes a special anti-piracy unit. However, the South African police are currently so overwhelmed with illegal activities that enforcing these laws on a consistent basis has proved difficult. One U.S. firm estimates that pirated software comprises approximately 50 percent of the local market and similar estimates are made for pirated recorded music and videos.

South Africa amended its Medicines Act in December 1997. The new law appears to empower the Minister of Health to abrogate patent rights for pharmaceuticals. It also would permit parallel imports. Implementation of the law has been suspended pending the resolution of a constitutional challenge in the South African courts. Undisclosed data also is not adequately protected under South African law. The need to provide such protection quickly is demonstrated by the approval in South Africa of a generic copy of a medicine which still

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has undisclosed data protected from competitors' use in many countries. Largely as a result of these concerns, South Africa was placed on the Special 301 Watch List in 1998.

### **SERVICES BARRIERS**

South Africa made commitments on most of the basic telecommunications services in the WTO negotiations. It adopted the reference paper on regulatory commitments. Although South Africa offered to end its monopoly of long-distance, data, telex, fax and privately leased circuits services as of 2004, it committed to guarantee only one additional operator in these areas at that time. The South African Department of Communications announced that Telkom SA's exclusivity for fixed wired telephony will end in 2002. The exclusivity period may be extended to 2003 if Telkom meets its roll out target although the extension is not guaranteed. Due to Telkom's monopoly, voice data transmission is not a permissible service for VANS operations. Telkom is also challenging in court the right of call-back providers to operate in South Africa, claiming such service violates its exclusivity in international service. South Africa will make commitments within one year of adopting legislation on satellite-based services.

In the WTO financial services negotiations, South Africa submitted a proposal for increased access to its market. However, to operate as a branch, a foreign bank will be required to capitalize its local operation by the greater of 8 percent of risk-weighted assets and other contingent liabilities or 50 million rand.

### **INVESTMENT BARRIERS**

South Africa has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. The measures deal with local content requirements in the automotive, telecommunications, equipment, tea and coffee sectors. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. South Africa, as a developing country for investment issues, must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO members meet these obligations.

Vice President Gore and South African Deputy President Mbeki signed an income tax treaty on February 17, 1997, in Cape Town. It was then ratified by each country and entered into force on January 1, 1998. The treaty, designed to increase cross-border flows of capital, trade, and technology between the United States and South Africa, should remove certain existing tax disincentives to investment in South Africa. The treaty accomplishes these objectives by reducing tax rates on certain cross-border income flows, increasing investor confidence through protection against nondiscriminatory taxation, and providing for a dispute-resolution mechanism.

On February 18, 1999, in a ceremony in Cape Town presided by Vice President Gore and Deputy President Mbeki, the United States and South Africa signed a Trade and Investment Framework Agreement (TIFA). The TIFA, the first ever negotiated with a country in sub-Saharan Africa, establishes the terms of reference for a structured dialogue on trade, intellectual property, and investment issues between the United States and South Africa. The TIFA creates a Trade and Investment Council, composed of representatives of both governments, which will meet regularly to discuss specific trade and investment matters, negotiate agreements if appropriate, and identify and work to remove impediments to trade and investment flows. While the Trade and Investment Council is a government-to-government body, the private sectors of both countries may also be consulted.

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TIFAs provide a mechanism in which trade, investment, intellectual property, and other issues can be addressed promptly.

### **ANTICOMPETITIVE PRACTICES**

#### **Competition Policy**

Oligopolies and monopolies prevail in certain South African industries because of weak competition laws, international isolation, and the policies of the apartheid era government. In May 1998, a new competition law, based on the Canadian model was passed to address this issue.

#### **Transparency and Corruption**

The issues of corruption and transparency receive a great deal of press attention and have been the focus of increased concentration at the highest levels of the SAG. Late last year, a conference was held in Parliament to discuss ways to battle corruption in the public sector and another such conference is scheduled for March 1999. The SAG also has a special unit, the "Heath Commission," headed by Judge William Heath, which has extraordinary powers to investigate official corruption and work towards recovering public money lost through these activities. The commission has had some significant successes. Both President Mandela and Deputy President Mbeki have made corruption a major focus of their speeches. The SAG has expressed interest in signing the OECD Anti-Bribery Convention. U.S. businesses have complained about lack of transparency in awarding some public tenders.

#### **Southern African Customs Union**

The Southern African Customs Union (SACU) was created in 1910 with South Africa, Botswana, Lesotho, and Swaziland as its members. Namibia joined in 1969. Because SACU predated the creation of the GATT in 1947, notification of the duty-free status of goods from Namibia, Botswana, Swaziland, and Lesotho continues to be permitted under a grandfather clause. South Africa is in the process of renegotiating the SACU agreement with its partners, but it is not clear when these discussions will be completed. In the meantime, the current trading regime between the SACU countries is expected to continue. Key issues in the negotiations include the revenue-sharing formula, time lags in distribution of revenue, management of the system, and the need for a dispute resolution mechanism. Imports from outside the SACU are subject to a common external tariff. The tariffs are determined by the Board of Tariffs and Trade (BTT) in South Africa and implemented throughout the SACU.

### **ELECTRONIC COMMERCE**

South Africa has a vibrant and growing Internet industry and the country is now in the world's top twenty countries ranked by number of Internet sites. A U.S. telecommunications company ranks among one of the major industry operators in South Africa.

The South African Government intends to develop legislation on cyber laws such as digital signature and encryption that will facilitate the development and growth of electronic commerce. It has not indicated that such legislation will restrict or overregulate electronic commerce.